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12 and IMAGE DEVICE INC.

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN JOSE DIVISION

16 ATECH FLASH TECHNOLOGY INC. &  
17 SUNUS SUNTEK INC.

18 Plaintiffs,

19 vs.

20 MARTIN C. LIN, YUSHAN WANG,  
21 A.K.A. SAMANTHA WANG, and IMAGE  
22 DEVICE INC.

23 Defendants.

No. C07 02949 PVT

**APPLICATION TO WITHDRAW AS  
COUNSEL OF RECORD;  
MEMORANDUM OF LAW IN  
SUPPORT**

The Hon. Patricia V. Trumbull

Filed concurrently:

1. Declaration of Jeffrey K. Lee
2. Proposed Order
3. Substitution of Attorneys

**APPLICATION TO WITHDRAW AS COUNSEL OF RECORD**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

GCA Law Partners LLP ("GCA" or "Withdrawing Counsel"), counsel for  
defendants MARTIN C. LIN, YUSHAN WANG, AKA SAMANTHA WANG, and  
IMAGE DEVICE INC. (collectively referred to as "Defendants"), hereby applies, pursuant

1 to Civil Local Rule 11-5(a), for an order permitting it to withdraw as counsel of record for  
 2 Defendants.

3 This application is made on the grounds that, *inter alia*, (1) notice of withdrawal  
 4 has been given reasonably in advance to Defendants and all other parties appearing in the  
 5 case; (2) Defendants have knowingly and freely consented to GCA's withdrawal and  
 6 secured the services of substitute counsel for this action; and (3) Defendants and  
 7 Withdrawing Counsel have irreconcilable differences over the management and direction  
 8 of the litigation, making it unreasonably difficult for GCA to continue to represent  
 9 Defendants effectively. This application is based on the accompanying memorandum, the  
 10 Declaration of Jeffrey K. Lee, the Substitution of Attorneys filed simultaneously with this  
 11 application, and any other arguments and evidence presented to this Court.  
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15 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**  
 16 **APPLICATION TO WITHDRAW AS COUNSEL OF RECORD**

17 **I. BACKGROUND**<sup>1</sup>

18 On or about June 26, 2007, GCA Law Partners LLP ("GCA" or "Withdrawing  
 19 Counsel"), was retained by Defendants MARTIN C. LIN, YUSHAN WANG, AKA  
 20 SAMANTHA WANG, and IMAGE DEVICE INC. (collectively referred to as  
 21 "Defendants") to represent each in connection with this action.  
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24 On July 20, 2007, GCA filed on Defendants' behalf, a Motion to Dismiss pursuant  
 25 to Federal Rules of Civil Procedure 12(b)(1), 12(b)(2), and 12(b)(6), to dismiss the original  
 26

27 <sup>1</sup>The facts recited in this memorandum are set forth in the accompanying  
 28 Declaration of Jeffrey K. Lee.

1 Complaint for Damages filed by plaintiffs Atech Flash Technology, Inc. and Sunus Suntek,  
2 Inc. After a full briefing of the issues and oral argument at a September 18, 2007 hearing,  
3 on September 20, 2007, the Court granted Defendants' motion, dismissing the complaint  
4 for lack of subject matter jurisdiction and allowing Plaintiffs leave to amend. Plaintiffs  
5 filed their First Amended Complaint on October 8, 2007. Defendants' answer or response  
6 to the First Amended Complaint became due on or by October 26, 2007.  
7

8 This case has been referred to mediation due to be completed by December 12,  
9 2007. The Initial Case Management Conference is scheduled for December 4, 2007 with  
10 an initial disclosures exchange, a Joint Case Management Statement, and a Rule 26(f)  
11 report due on November 27, 2007.  
12

13 GCA notified Defendants verbally during September 2007 and in writing on  
14 October 8, 2007, that it would seek to withdraw as Defendants' counsel of record. GCA  
15 makes this application, *inter alia*, due to (1) Defendants' knowing and free consent to  
16 GCA's withdrawal and (2) irreconcilable differences over the management and direction of  
17 the litigation, making it unreasonably difficult for GCA to continue to represent Defendants  
18 effectively.  
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20 On October 19, 2007, Defendants notified GCA in writing that they have retained  
21 Richard Kutche, Esq. of San Jose, California as substitute counsel in this matter. Notice of  
22 this application for withdrawal has been given reasonably in advance to the Defendants and  
23 all other parties appearing in the case. Mr. Kutche has informed Withdrawing Counsel that  
24 he and Plaintiff counsel have agreed to a reasonable extension of time for Defendants to  
25 file a responsive pleading addressed to the First Amended Complaint. A Substitution of  
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1 Attorneys evidencing Defendants' consent to withdrawal is being filed simultaneously with  
2 this application.

3  
4 **II. ARGUMENT**

5 Civil Local Rule 11-5 governs counsel's withdrawal from a case. Under L.R. 11-  
6 5(a) counsel may withdraw only after being "relieved by order of Court after written notice  
7 has been given reasonably in advance to the client and to all other parties who have  
8 appeared in the case." Moreover, L.R. 11-5(b) encourages simultaneous appearance of  
9 substitute counsel – upon which withdrawing counsel may be fully relieved of all  
10 obligations to the client: "When withdrawal by an attorney from an action is *not*  
11 *accompanied by simultaneous appearance of substitute counsel* or agreement of the party  
12 to appear pro se, leave to withdraw may be subject to the condition that papers may  
13 continue to be served on counsel for forwarding purposes (or on the Clerk, if the Court so  
14 directs), *unless and until the client appears by other counsel* or pro se. . . ." (emphasis  
15 added).

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17  
18 California Rule of Professional Conduct Rule 3-700(b) requires that withdrawing  
19 counsel take "reasonable steps to avoid reasonably foreseeable prejudice to the rights of the  
20 client, including giving due notice to the client" and "allow[] time for employment of other  
21 counsel." The circumstances for withdrawal in California include (but are not limited to)  
22 certain enumerated grounds identified by California Rule of Professional Conduct Rule 3-  
23 700(c). Rule 3-700(c) provides in relevant part that "a member may not request permission  
24 to withdraw in matters pending before a tribunal, . . . unless such request or such  
25 withdrawal is because:  
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1 (1) The client . . . (d) . . . renders it unreasonably  
2 difficult for the member to carry out the employment  
3 effectively, or . . . ,

4 \* \* \*

5 (5) The client knowingly and freely assents to  
6 termination of the employment. . . .

7 All conditions for withdrawal identified in Civil Local Rule 11-5 and Rule 3-700  
8 have been satisfied with respect to this application. As stated in the Declaration of Jeffrey  
9 K. Lee, GCA has taken reasonable steps to avoid reasonably foreseeable prejudice to the  
10 rights of the client, including by providing reasonable advance notice to the client of its  
11 pending withdrawal and providing time for Defendants to employ substitute counsel in this  
12 matter. Defendants knowingly and freely assented to GCA's withdrawal and have notified  
13 GCA of the identity of substitute counsel, Richard Kutche, Esq., of San Jose, California. A  
14 Substitution of Attorneys filed simultaneously with this application provides Defendants'  
15 respective signed consents. Moreover, among other bases for withdrawal, Withdrawing  
16 Counsel and Defendants have irreconcilable differences over the management and  
17 direction of the litigation, making it unreasonably difficult for GCA to continue to  
18 represent Defendants effectively.  
19

20 A copy of this application is being served by the Court's ECF system on the  
21 counsel listed on the Court's service list. In addition, copies of this submission, supporting  
22 documents, and the Substitution of Attorneys are being served on the Defendants, Richard  
23 Kutche, Esq., and the court-appointed mediator by United States mail and electronic mail.  
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1 **III. CONCLUSION**

2 For the reasons above, GCA Law Partners LLP respectfully requests that the Court  
3 grant its application to withdraw as counsel of record for all Defendants with no further  
4 obligations in this matter.  
5

6 Respectfully submitted,

7  
8 Dated: October 23, 2007

GCA LAW PARTNERS LLP

9 By: /s/ Jeffrey K. Lee  
10 Jeffrey K. Lee

11 Attorneys for Defendants  
12 MARTIN C. LIN, YUSHAN WANG,  
13 AKA SAMANTHA WANG, and  
14 IMAGE DEVICE INC.  
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**CERTIFICATE OF SERVICE**

The foregoing APPLICATION TO WITHDRAW AS COUNSEL OF RECORD;  
MEMORANDUM OF LAW IN SUPPORT; DECLARATION OF JEFFREY K. LEE;  
SUBSTITUTION OF ATTORNEY and [PROPOSED] ORDER have been filed  
electronically with the Clerk of the Court this day through the Court's electronic filing  
system, which will provide notice to the following E-mail recipients:

Yung Ming Chou, Esq.  
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Tel.: (510) 713-8698  
Fax: (510) 713-8690

In addition, the forgoing documents have been served via electronic mail on the  
following:

Sue J. Stott, Esq.  
Thelen Reid Brown  
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Dated: October 23, 2007

GCA LAW PARTNERS LLP

By: /s/ Jeffrey K. Lee.  
Jeffrey K. Lee